

Application No. 10/797,983

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-6 (cancelled)

7. (currently amended): A yeast culture and capsaisin composition for the preparation of a topical pain treatment comprising:

a fermentation mixture comprising:

a yeast culture;

a *Capsicum sp.* cultivar in water; and

a nutrient mixture; and

an oil, said fermentation mixture layered on said oil to form a discrete layer on said oil so that said oil receives and holds to receive capsaisin and volatile fermentation byproducts from said fermentation mixture, ~~and said oil receiving and holding said capsaisin and volatile fermentation byproducts; and~~

wherein said oil, being substantially unmixed with said fermentation mixture, is separable from said fermentation mixture for application applicable as a topical pain treatment.

8. (previously presented): The inoculum of claim 7 further comprising a carbohydrate.

9 - 19. (cancelled)

20. (previously presented): The composition of claim 7 further comprising a second nutrient mixture comprising at least one member selected from the group consisting of calcium, magnesium, iron, zinc and a combination thereof.

21. (previously presented): The composition of claim 20 wherein said second nutrient mixture comprises an amount of between approximately 0.001% and approximately 0.01% by weight.

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22. (previously presented): The composition of claim 7 further comprising a micronutrient mixture.

23. (previously presented): The composition of claim 22 wherein said micronutrient mixture comprises an amount of between approximately 0.0001% and approximately 0.01% by weight.

24. (previously presented): The composition of claim 7 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 1 and approximately 120 parts water.

25. (previously presented): The composition of claim 24 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 2 and approximately 50 parts water.

26. (previously presented): The composition of claim 25 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 5 and approximately 10 parts water.

27. (previously presented): The composition of claim 8 wherein said carbohydrate comprises an amount of between approximately 1% and approximately 40% by weight.

28. (previously presented): The composition of claim 27 wherein said carbohydrate comprises an amount of between approximately 5% and approximately 20% by weight.

29. (previously presented): The composition of claim 28 wherein said carbohydrate comprises an amount of between approximately 10% and approximately 15% by weight.

30. (previously presented): The composition of claim 7 wherein said yeast culture comprises an amount of between approximately 0.11% and approximately 50% by volume.

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31. (previously presented): The composition of claim 30 wherein said yeast culture comprises an amount of between approximately 1% and approximately 20% by volume.

32. (previously presented): The composition of claim 31 wherein said yeast culture comprises an amount of between approximately 5% and approximately 10% by volume.

33. (previously presented): The composition of claim 7 wherein said nutrient mixture comprises an amount of between approximately 0.1% and approximately 10% by volume.

34. (previously presented): The composition of claim 33 wherein said nutrient mixture comprises an amount of between approximately 1% and approximately 5% by volume.

35. (withdrawn): The fermentation medium of claim 19 wherein said nutrient mixture comprises nitrogen, phosphorus and potassium.

36. (withdrawn): The fermentation medium of claim 35 comprises approximately 20-20-20 nitrogen-phosphorus-potassium.

37. (currently amended): The composition of claim [19] Z wherein said *Capsicum sp.* comprises *Capsicum chinense*.

Claims 38-82 (Cancelled)

83. (previously presented): The composition of claim 7 wherein a ratio of said *Capsicum sp.* cultivar to said oil is of one part *Capsicum sp.* cultivar to from between approximately 5 parts and approximately 10,000 parts of said oil.

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84. (currently amended): The inoculum composition of claim 7 wherein said nutrient mixture comprises nitrogen.

85. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises phosphorus.

86. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises potassium.

87. (previously presented): The medium of claim 19 wherein said nutrient mixture comprises nitrogen.

88. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises phosphorus.

89. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises potassium.

90. (withdrawn): The medium of claim 19 further comprising manganese.

91. (withdrawn): The medium of claim 19 further comprising cobalt.

92. (withdrawn): The medium of claim 19 further comprising copper.